

RESOLUTION NO. 6

SERIES 2016

RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL AWARDING A CONSTRUCTION SERVICES  
CONTRACT TO MUELLER CONSTRUCTION SERVICES,  
INC. FOR A CLARIFIER IMPROVEMENT PROJECT IN AN  
AMOUNT NOT TO EXCEED \$113,000.00

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town staff recommends, after conducting a competitive bid process, to award a construction services contract for the Town's clarifier improvement project (the "Project") to Mueller Construction Services, Inc. (the "Contractor");

WHEREAS, following the Town staff recommendation, the Town Council desires to award the construction services contract for the Project to Contractor pursuant to the terms and conditions for the performance of the Project set forth in the contract attached to these Resolutions; and

WHEREAS, the Town Council finds that it is in the best interests of the health, safety and general welfare of the citizens and visitors of the Crested Butte to award the construction services contract for the Project to Contractor, and in connection therewith, adopt and execute the contract referenced herein.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings.** The Town Council hereby finds that entering into a contract for the construction of the Project with Contractor in an amount not to exceed \$113,000.00 is in the best interest of the Town.

2. **Approval; Authorization.** Based on the foregoing, the Town Council hereby approves the construction contract with Contractor in substantially the same form as attached hereto as **Exhibit "A."** Any changes thereto shall be made only following approval by the Town Attorney. The Mayor, Mayor Pro Tem and Town Public Works Director are hereby authorized to execute said Contract and any associated documentation in connection therewith.

3. **Funding.** Funding for the Project has been provided for by way of the Enterprise Fund Reserves.

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 21<sup>st</sup>  
DAY OF March, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel  
Glenn Michel, Mayor

ATTEST

Lynelle Stanford  
Lynelle Stanford, Town Clerk

(SEAL)



**EXHIBIT “A”**

**Construction Services Documents**

[Attach here]

## SECTION 00501

### CONSTRUCTION AGREEMENT

**THIS AGREEMENT**, entered into as of the 22<sup>nd</sup> day of March, 2016, by and between TOWN OF CRESTED BUTTE, hereinafter called "Town," and Mueller Construction Services, Inc., hereinafter called "Contractor."

In consideration of the mutual covenants and obligations hereinafter set forth, it is agreed by and between the parties hereto as follows:

**Article 1. Contract Documents.** The contract documents consist of this Agreement, exhibits to this agreement, the conditions of the contract (general, supplementary, and other conditions), the drawings, specifications, Notice of Award, Notice to Proceed, Contractor's Bid, and all addenda issued prior to, and all modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement.

**Article 2. Contractor's Representations.** In order to induce the Town to enter into this Contract, Contractor makes the following representations:

- A. Contractor has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.
- B. Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by Contractor in order to perform and furnish the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Section 4.03 of the General Conditions.
- C. Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- D. Contractor has given the Engineer, JVA, Inc., written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by JVA, Inc., is acceptable to Contractor.

**Article 3. Assignment.** It is understood that the Town enters into this Agreement based on

the special abilities and representations of the Contractor and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities, nor delegate any duties arising under this Agreement without the prior written consent of the Town.

**Article 4. Scope of Work.** All necessary labor, supervision, equipment, tools, and materials for replacing the existing clarifier drive head as described in **Bid Alternative No. 1**, replacing the clarifier squeegees, sandblasting and painting all of the metal surfaces of the existing clarifier mechanism including the inlet pipe. Work to include all associated site work related to the project.

**Article 5. Time of Completion.** Contractor shall begin work on or after **August 31<sup>st</sup>, 2016** and agrees to substantially complete all work by **November 30<sup>th</sup>, 2016**. Final completion is required after fourteen (14) additional calendar days from Substantial Completion. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

**Article 6. Liquidated Damages.** It is specifically recognized by and between the parties hereto that the Town will suffer certain unspecified damages in the event the project is not completed within the time set forth above. In recognition of the difficulty of ascertaining the actual damages to be sustained by the Town, the parties agree that the assessment of liquidated damages shall be appropriate. In the event the project is not completed within the specified time, there shall be assessed against the Contractor, and the Contractor hereby authorizes the Town to retain from any monies due the Contractor, the sum of One-Thousand (\$1,000.00) dollars per calendar day for each and every calendar day the project remains unfinished for Substantial Completion until the work is Substantially Complete. In no event shall liquidated damages exceed ten percent (10%) of the total project cost.

**Article 7. Contract Sum, Lump Sum.** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to below:

For all Work, a lump sum of: **One hundred and three thousand dollars (\$103,000.00)**

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

**Article 8. Payment Procedures.** Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Town's Engineer, JVA Incorporated as provide in Article 14 of the General Conditions.

- A. Progress Payments. All progress payments will be on the basis of the progress of the Work measured by the schedule of values as established in the Section 2.07 of the General Conditions.

- B. **Retainage.** The Town shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:
- (1) The Town shall authorize partial payments of the amount due at its next regularly scheduled meeting or as soon thereafter as practicable if the Contractor is satisfactorily performing the Contract. The Town shall withhold five percent (5%) of the calculated value of the completed work. The Town shall retain the five percent (5%) until the Contract is completed satisfactorily and finally accepted by the Town.
  - (2) Upon completion and acceptance of the Work, all retained amounts will be released to Contractor under the terms and conditions governing final payment. Consent of the Surety shall be obtained before retainage is paid by Town. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.
  - (3) Retainage shall apply to materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing upon which Contractor requests progress payment.
  - (4) Retainage withheld by the Town shall not be subject to substitution by the Contractor with securities or any arrangements involving an escrow or custodianship therefore.

**Article 9. Hazardous Materials.** The parties shall deal with hazardous materials and environmental conditions at the work site in accordance with Section 4.06 of the General Conditions.

**Article 10. Final Payment.** The Town shall make a final settlement in accordance with 24-91-103 C.R.S. within sixty (60) days after the Contract is completed satisfactorily and finally accepted by the Town.

**Article 11. Change Orders.** The Town may order changes within the scope of the Work without invalidating this Agreement. If such changes increase or decrease the amount due under the contract documents, or the time required for the performance of the Work, such alteration shall be approved by the parties in writing for the change order. The Contractor shall not proceed with any work covered by a proposed change order until he receives a properly executed change order form.

**Article 12. Performance Guarantee.**

- A. The Contractor shall fully and faithfully comply with all terms of this contract for the Work described herein and hereby guarantees the workmanship and materials for a period of two years, commencing on the date of the Town's final acceptance

of the Work. Contractor agrees to repair or replace, any workmanship or materials that become defective, within said two year period, even though notice thereof be given by the Town after said two year period. Repairs or replacement shall be at the Contractor's sole cost and expense. The necessity of repairs or replacement is at the sole determination of the Town.

- B. The Contractor shall fully and faithfully discharge the Contractor's obligation with respect to the Work during the installation and construction period and with respect to those that may arise as a result of the Contractor's two year guaranty.
- C. The performance and completion of the warranty work are to be further guaranteed by Performance, Payment and Guarantee Bonds in an amount at least equal to the Contract Price, in the form and substance attached herewith.

**Article 13. Indemnification and Release of Liability.**

- A. General Liability. The Contractor will indemnify and hold harmless the State and the Town and all its officers, agents and employees against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of the contractor or sustained in connection with the performance of any contract related to the project or by conditions created thereby, or based upon any violation of any statute, ordinance, regulation, and the defense of any such claims or actions.
- B. Governmental Immunities Act. The Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. § 24-10-101 et seq.) as from time to time amended, or otherwise available to the Town, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

**Article 14. Construction Completion.** The Town shall have the right, but shall have no obligation or duty, to perform or pay for the performance of any of the Contractor's obligations hereunder, including, without limitation, payment of any subcontractor or supplier of labor or materials, anything herein to the contrary notwithstanding.

**Article 15. Independent Contractor.** The Contractor in performing the Work hereunder is an independent contractor and reserves the right to control Contractor's employees and representatives, and the Town reserves only the right of inspection to ascertain that the completed Work conforms with the requirements of this Agreement. Contractor acknowledges that no governmental immunity is waived and that no specific relationship with, or duty of care to, the Contractor or third party is assumed by such review or approval.

**Article 16. Town Representative.** The Town's project representative is JVA Incorporated,

who shall make, within the scope of their authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instructions shall be directed to the Town representative.

**Article 17. Notice.** Any notice to be sent pursuant to this Agreement shall be deemed delivered if mailed to the other party at the following addresses. Any such notice shall be sent certified or registered mail, return receipt requested, postage prepaid.

**CONTRACTOR:** Muller Construction Services, Inc.  
5032 County Road 154  
Glenwood Springs, CO 81601

**ENGINEER:** Cooper Best, P.E.  
JVA, Incorporated  
214 8<sup>th</sup> Street, Suite 210  
Glenwood Springs, CO 81601

**TOWN:** Rodney Due  
Town of Crested Butte  
507 Maroon Ave  
Crested Butte, CO 81224

**Article 18. Public Employee Financial Interest.** The signatories hereto aver that to their knowledge, no employee of the State or municipality has any personal or beneficial interest whatsoever in this contract as prescribed by C.R.S. § 24-18-201 and C.R.S. §24-50-507.

**Article 19. Colorado Labor Preference.** In accordance with C.R.S. § 8-17-101, et. seq., Colorado labor shall be employed to perform the work as provided by law.

**Article 20. Bid Preference - Public Projects.** In accordance with C.R.S. § 8-19-101, et. seq., Colorado resident bidders shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given are required by the state or foreign country in which the nonresident bidder is a resident to perform the work as provided by law.

**Article 21. Discrimination and Affirmative Action.** The Contractor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices

**Article 22. Bribery and Corrupt Influences; Abuse of Public Office.** The signatories hereto aver that they are familiar with C.R.S. § 18-8-301, et. seq. (Bribery and Corrupt Influences) and C.R.S. § 18-8-401. et. seq.,(Abuse of Public Office), and that no violation of such provisions is present.



**Article 23. Workmen's Compensation Coverage.** The Contractor is responsible for providing Workmen's Compensation Coverage for all of its employees to the extent required by law, and for providing such coverage or requiring its subcontractors to provide such coverage for the subcontractor's employees. In no case is the Owner responsible for providing Workmen's Compensation Coverage for any employees or subcontractors of Contractor pursuant to this Agreement, and Contractor agrees to indemnify the Owner for any costs for which the Owner may be found liable in this regard.

**Article 24. Illegal Aliens.** The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101, et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract. The Contractor represents, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract through participation in the e-verify program or the department program. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101, et seq., the Town may terminate this contract for breach of contract, and the Contractor shall be liable for actual and consequential damages to the Town. The contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this public contract is being performed.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the Contractor shall:

- A. Notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-paragraph (a) above, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

**Article 25. Archeological Artifacts.** In the event archaeological artifacts or historical sources are unearthed during construction excavation of the project, Contractor shall stop or cause to be stopped, construction activities and will notify the State Historical Conservation Office and the Town of such unearthing.

**Article 26. No Lobbying.** No portion of the payments received for the Work may be used for lobbying, or propaganda as prohibited by 18 U.S.C. §1913 or Section 607 (a) of Public Law 96-74.

**Article 27. Not used**

**Article 28. Binding on Successors.** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns in respect of all covenants, agreements and obligations contained in the Contract Documents.

**Article 29. Attorney Fees.** Should it be necessary for either party to dispute the Contract Documents and the transactions contemplated therein to enforce the terms of this Agreement, the prevailing party shall recover, in addition to any damages proved, all attorney's fees, costs and other expenses of the litigation.

**Article 30. Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

**Article 31. Complete Agreement.** This Agreement constitutes the sole agreement between the parties concerning the subject matter hereunder and all prior negotiations, representations, understandings, or agreements concerning the subject matter hereunder are hereby canceled. No modification, change, or alteration of the Agreement shall be of any legal force or effect unless in writing, signed by all the parties hereto.

**Article 32. Compliance with Applicable Laws.** At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable Federal and State laws that have been or may hereafter be established.

**Article 33. Governing Law.** This Agreement shall be governed by the laws of the State of Colorado.

**Article 34. Partial Invalidity.** If any provision of this agreement are in violation of any statute or rule of law of the State of Colorado, then such provision shall be deemed null and void to the extent that they may be violative of law, but without invalidating the remaining provisions hereof.

**Article 35. Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument. This Contract is to be executed in quadruplicate.

**Article 36. Appropriations.** Pursuant to C.R.S. §24-91-103.6, the following applies:

- A. The amount of money appropriated by the Town is equal to or in excess of the contract amount.

- B. No change order shall be permitted requiring additional compensable work to be performed which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the Town that lawful appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under another provision for a remedy-granting provision in this contract; and
- C. For any form of change order or directive by the Town requiring additional compensable work to be performed, the Town shall reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in this contract, for all additional directed work performed until a change order is finalized. In no instance shall this periodic reimbursement be required before the contractor has submitted an estimate of cost to the Town for the additional compensable work to be performed. This provision shall only apply when additional compensable work is required on an emergency basis and it is necessary that work begin without a change order as required by Article 11 of this Construction Agreement.

**Article 37. Miscellaneous.**

- A. Terms used in this Contract which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

**TOWN OF CRESTED BUTTE**

*Glenn Michel*

By  
Glenn Michel, Mayor

**ATTEST:**

*Lynelle Stanford*

By  
Lynelle Stanford, Town Clerk

**CONTRACTOR**

By

*Joe Mueller*

JOE MUELLER, PRESIDENT

**ATTEST:**

By

*[Signature]*

OFFICE MANAGER

STATE OF COLORADO)

) ss.

COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ as Director of Purchasing.

My commission expires:

Witness my hand and official seal.

Notary Public

## PERFORMANCE BOND

CONTRACTOR (name and address):

Mueller Construction Services, Inc.  
5032 County Road 154  
Glenwood Springs, CO 81601

OWNER (name and address):

Town of Crested Butte  
507 Maroon Ave., Crested Butte, CO 81224

CONSTRUCTION CONTRACT

Effective Date of the Agreement: March 22, 2016

Amount: (\$103,000.00) One Hundred Three Thousand and NO/100THS Dollars

Description (name and location): Town of Crested Butte Clarifier Improvement Project  
Crested Butte, CO

BOND

Bond Number: CSB0018426

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): April 4, 2016


Amount: \$103,000.00 One Hundred Three Thousand and NO/100THS Dollars---

Modifications to this Bond Form: ☒ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.


### CONTRACTOR AS PRINCIPAL

Mueller Construction Services, Inc. (seal)  
Contractor's Name and Corporate Seal

By:   
Signature

Joe Mueller  
Print Name

President  
Title

Attest:   
Signature

OFFICE MANAGER  
Title

### SURETY

Contractors Bonding and Insurance Company (seal)  
Surety's Name and Corporate Seal

By:   
Signature (attach power of attorney)

Christina L. Townsend  
Print Name

Attorney-in-Fact  
Title

Attest:   
Signature

Brooke Beck, Witness to Surety  
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract

Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years

after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:



## PAYMENT BOND

**CONTRACTOR** (name and address):

Mueller Construction Services, Inc.  
5032 County Road 154  
Glenwood Springs, CO 81601

**SURETY** (name and address of principal place of business):

Contractors Bonding and Insurance Company  
9025 N. Lindbergh Drive  
Peoria, IL 61615

**OWNER** (name and address):

Town of Crested Butte  
507 Maroon Ave.  
Crested Butte, CO 81224

**CONSTRUCTION CONTRACT**

Effective Date of the Agreement: March 22, 2016

Amount: (\$103,000.00) One Hundred Three Thousand and NO/100THS Dollars

Description (name and location): Town of Crested Butte Clarifier Improvement Project  
Crested Butte, CO

**BOND**

Bond Number: CSB0018426

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): April 4, 2016

Amount: \$103,000.00 One Hundred Three Thousand and NO/100THS Dollars---

Modifications to this Bond Form: ☒ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

Mueller Construction Services, Inc. (seal)  
Contractor's Name and Corporate Seal

By: [Signature]  
Signature

Joe Mueller  
Print Name

President  
Title

Attest: [Signature]  
Signature

OFFICE MANAGER  
Title

**SURETY**

Contractors Bonding and Insurance Company (seal)  
Surety's Name and Corporate Seal

By: [Signature]  
Signature (attach power of attorney)

Christina L. Townsend  
Print Name

Attorney-in-Fact  
Title

Attest: [Signature]  
Signature

Brooke Beck, Witness to Surety  
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.



1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or

(2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond

shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:



9025 N. Lindbergh Dr. | Peoria, IL 61615  
Phone: (800)645-2402 | Fax: (309)689-2036

# POWER OF ATTORNEY

## RLI Insurance Company

### Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of **RLI Insurance Company** and **Contractors Bonding and Insurance Company**, required for the applicable bond.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Tim Blanchard, Ashley K. Anderson, Jonathan B. Land, Christina L. Townsend, Vickie Golobic, jointly or severally

in the City of Denver, State of Colorado, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

**RLI Insurance Company** and **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 10th day of June, 2015.

State of Illinois }  
County of Peoria }

SS



**RLI Insurance Company**  
**Contractors Bonding and Insurance Company**

Roy C. Die

Vice President

#### CERTIFICATE

On this 10th day of June, 2015, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, and/or **Contractors Bonding and Insurance Company**, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 4th day of April, 2016.

Jacqueline M. Bockler  
Jacqueline M. Bockler Notary Public



**RLI Insurance Company**  
**Contractors Bonding and Insurance Company**

Roy C. Die

Vice President